

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2012 APR 26 PM 2:53
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

The Arkansas Municipal
Waste to Energy Warehouse Site

E.I. du Pont de Nemours & Company
(for Griffin LLC), Allergan, Inc., United
Industries Corporation, d/b/a Chemsico,
Agriliance, LLC (Agro Distribution, LLC),
Strong Environmental, Inc., Chemical
Reclamation Services, LLC, and Solvent
Recovery, LLC

Respondents.

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 6
CERCLA Docket No. 06-11-08

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C. §§
9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the Respondents listed in Section III (Definitions), Paragraph 7, at n. This Settlement Agreement provides for the performance of a removal action by the Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with the property located at the Arkansas Municipal Waste to Energy Warehouse Site located at 420 West Parsons Drive, Osceola, Arkansas.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA).

3. EPA has notified the State of Arkansas Department of Environmental Quality (ADEQ) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and the Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by the Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. The Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. The Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon the Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Settlement Agreement.

6. The Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of the Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents' assets shall be used to complete all such requirements. The Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. The Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXII.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Arkansas" shall mean the Arkansas Department of Environmental Quality (ADEQ), and any successor departments or agencies of the State.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work required of the Respondents, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 23 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 33 (emergency response), and Paragraph 59 (work takeover).

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. "Settlement Agreement" shall mean this Administrative Order on Consent and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. "Parties" shall mean EPA and the Respondents.

l. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the Site through September 30, 2010, plus interest on all such costs running through the date payment is made. Future soil sampling costs incurred as part of the classic emergency removal action are also included within the definition of past response costs. EPA estimates that the classic emergency removal action soil sampling costs will total \$200,000 or less. The Respondents' payment due for the removal of 231 containers at \$513.00 per container is included within the definition of past response costs.

m. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "Respondents" shall mean all parties included in the caption of this Settlement Agreement, including E.I. du Pont de Nemours & Company (for Griffin LLC), Allergan, Inc., United Industries Corporation, d/b/a Chemsico, Agrilience, Strong Environmental, Inc., Chemical Reclamation Services, LLC, and Solvent Recovery, LLC.

o. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

p. "Site" shall mean the Arkansas Municipal Waste to Energy Warehouse facility located at 420 West Parsons Drive, Osceola, Arkansas.

q. "State" shall mean the State of Arkansas Department of Environmental Quality.

r. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action as attached as an appendix to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

s. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

t. "Work" shall mean all activities the Respondents are required to perform under this Settlement Agreement, and Statement of Work.

IV. FINDINGS OF FACT

8. EPA Region 6 has information which indicates that hazardous substances, pollutants or contaminants, have been released or that there is a threat of such a release into the environment at the Site based upon the following:

a. By letter dated June 2, 2004, the Arkansas Department of Environmental Quality (ADEQ) formally requested EPA's assistance concerning the Site. The Site is located at 420 West Parsons Drive, Osceola, Arkansas, and included approximately 8,302 containers at the time ADEQ requested EPA's assistance. Many of these containers contained CERCLA hazardous substances. Some of the containers include ignitable and flammable wastes. A daycare facility is located in close proximity to the Site. As described in the conditions provided below, the Site presents an imminent and substantial endangerment to human health and the environment.

b. The Site was formerly associated with the operation of the Arkansas Municipal Waste to Energy incineration facility operated at 100 Incinerator Road, Osceola, Arkansas. By letter dated September 29, 2000, the City of Osceola was granted the authority by ADEQ to operate the incinerator facility. In addition, a company named Arkansas Municipal Waste to Energy Company (AMWE) operated the municipal waste incinerator facility under contract with the City of Osceola. In addition to municipal wastes, AMWE was permitted to receive medical wastes, non-hazardous and industrial wastes. AMWE is the former operator of the Site (AMWE Warehouse facility). AMWE ceased operations in 2003, and filed for bankruptcy in 2004. As a result of a community complaint in February 2003, ADEQ conducted investigatory activities at the Site.

c. While investigating the AMWE incinerator facility, ADEQ inspectors discovered the Site, an associated warehouse (the "Parsons Warehouse facility") located at 420 West Parsons Drive, Osceola, Arkansas. AMWE had placed thousands of containers of medical and industrial wastes in the Parsons Warehouse located at the Site. The Arkansas Municipal Waste to Energy Company did not have authorization to operate the Parsons Warehouse facility storing medical, hazardous and industrial wastes. At the same time, AMWE made representations to its customers that AMWE incinerated the containers shipped to AMWE for incineration, while the containers were actually stored at the Parsons Warehouse facility.

d. Some of the containers observed at the Site were in poor condition and spills on the warehouse floor were observed as well. Some of the containers were improperly stored and stacked three-high. In addition, the warehouse structure remains in poor condition although the ADEQ took measures to stabilize the roof. The condition of the warehouse generated security concerns requiring the Arkansas State Court to take action during December 2003. EPA also engaged in response measures designed to stabilize the structural integrity of the Parsons

Warehouse from June 2004 through September 2004.

e. ADEQ's March 2003 through April 2004 and EPA's 2004 -2006 investigative work, which also included sampling of containers belonging to the Respondents, revealed the presence of CERCLA hazardous substances and confirmed the presence of wastes that exhibit RCRA hazardous waste characteristics including highly ignitable wastes, flammable wastes, corrosive wastes, trichlorofluoromethane, methyl chloride, benzene, toluene, ethylbenzene, xylene, 2-butanone, 1-2-4- trimethylbenzene, 1-3-5- trimethylbenzene, 2-hexanone, styrene, formaldehyde, and radioactive wastes.

f. Prior to EPA's involvement in this removal action, approximately 20,000 containers were stored at the Site. After working with several parties who sent containers to the Site, several thousand containers of waste were removed from the Site pursuant to ADEQ's enforcement efforts. Pursuant to an August 19, 2004, Administrative Order on Consent between EPA and Pollution Control Industries, Inc. (PCI), a large number of containers (i.e., approximately 7,267) were removed from the Site under oversight conducted by EPA. A small number of containers (i.e., eight) containing low-level radioactive wastes were removed from the Site pursuant to an August 2, 2007, Administrative Order on Consent between EPA and TestAmerica (formerly known as Severn Trent Laboratories). Approximately 200 containers, most of which contained hazardous substances, were removed pursuant to a July 9, 2008, Administrative Order on Consent between EPA and Thermo Fisher Scientific, Inc.

g. According to the ADEQ and EPA records, the remaining containers have been sampled. ADEQ's March through April 2004 investigative work and EPA 2004 - 2008 response activities, which included the sampling of containers revealed the presence of CERCLA hazardous substances and RCRA hazardous waste characteristics identified in Paragraph 8(e) of this Order.

h. The Respondents conducted business activities which resulted in the generation of containers of waste shipped to the Site for disposal. Many of the Respondents' containers contained hazardous substances identified in Paragraph 8(e).

i. Approximately 708 containers of waste remain at the Site. Of those 708 containers the Respondents are responsible for either generating or transporting 231 to the Site.

j. Due to the presence of a large volume of CERCLA hazardous substances; the presence of highly flammable and ignitable wastes; the poor condition of some of the containers; the poor structural integrity of the warehouse; the stored containers stacked three-high; and the close proximity to a day care facility, the Superfund Division Director authorized an emergency removal action on June 8, 2004. This classic emergency removal action included perimeter air monitoring, inventory of the containers stored, stabilization, sampling of the containers of waste at the Site, and stabilization of the warehouse building. Consistent with the containers that have already been removed, the remaining containers (including some Respondents' containers) will also have to be removed from the warehouse, and transported to a CERCLA approved facility for

disposal. The removal of the remaining containers is necessary in light of the continuing hazards presented by the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site, as identified in Paragraph eight (8) of the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for carrying out all activities required by this Settlement Agreement. Each Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) and (4) of CERCLA, 42 U.S.C. § 9607(a)(3) and (4).
- e. The conditions described in Paragraph eight (8) of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that the Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

**VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,
AND ON-SCENE COORDINATOR**

10. The Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the names and qualifications of such contractors within ten (10) days of the Effective Date of this Settlement Agreement. The Respondents shall also notify EPA of the names and qualifications of any other contractors or subcontractors retained to perform the Work at least five (5) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, the Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within ten (10) days of EPA's disapproval.

11. Within ten (10) days after the Effective Date, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by the Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, the Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within ten (10) days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

12. EPA has designated Althea Foster of the Response and Prevention Branch, Region 6, as its On-Scene Coordinator (OSC). Except as otherwise provided in this Settlement Agreement, the Respondents shall direct all submissions required by this Settlement Agreement to the OSC at:

Althea Foster
On-Scene Coordinator
United States Environmental Protection Agency
Response and Prevention Branch, (6SF-RR)
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - 214-665-2268

13. EPA and the Respondents shall have the right, subject to Paragraph 11, to change their respective designated OSC or Project Coordinator. The Respondents shall notify EPA seven (7) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

14. The Respondents shall perform, at a minimum, all actions necessary to implement the removal action, as set forth in this Settlement Agreement and attached Statement of Work. The actions to be implemented generally include, but are not limited to, the following:

- a. The conduct of sampling and waste characterization activities for the all containers remaining at the Site.
- b. The conduct of removal activities for the all containers remaining at the Site.
- c. The transportation and disposal of all containers remaining at the Site at a CERCLA-approved disposal facility.

15. Work Plan and Implementation.

a. Within fifteen (15) days after the Effective Date of this Settlement Agreement, the Respondents shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 14 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement, and Statement of Work.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, the Respondents shall submit a revised draft Work Plan within ten (10) days of receipt of EPA's notification of the required revisions. The Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. The Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 15(b).

16. **Health and Safety Plan.** Within fifteen (15) days after the Effective Date of this Settlement Agreement, the Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning.

17. Quality Assurance and Sampling.

a. All necessary sampling and analyses as determined by EPA, and performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. The Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. The Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. The Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

b. Upon request by EPA, the Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. The Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, the Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. The Respondents shall notify EPA not less than five (5) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

18. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, the Respondents shall submit a proposal for post-removal site control consistent with Section 300.415(f) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, the Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

19. Reporting.

a. The Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 21st day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These summary reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments

anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. The Respondents shall submit two (2) copies of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, and/or any approved work plan. Upon request by EPA, the Respondents shall submit such documents in electronic form.

c. If the Respondents own or control property at the Site, the Respondents shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. If the Respondents own or control property at the Site, the Respondents also agree to require that their successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

20. Final Report. Within thirty (30) days after completion of all Work required by this Settlement Agreement and Statement of Work, the Respondents shall submit for EPA review and approval, a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed by the Respondents and their contractors, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

21. Off-Site Shipments.

a. The Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

i. The Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. The Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by the Respondent's following the award of the contract for the removal action. The Respondents shall provide the information required by Paragraph 21(a) and 21(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, the Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. The Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

22. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondents, the Respondents shall, commencing on the Effective Date of this Settlement Agreement, provide EPA, ADEQ, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

23. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than the Respondents, the Respondents shall use their best efforts to obtain all necessary access agreements within fifteen (15) days after the Effective Date, or as otherwise specified in writing by the OSC. The Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" include the payment of reasonable sums of money in consideration of access. The Respondents shall describe in writing their efforts to obtain access. EPA may then assist the Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. The Respondents shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

24. Notwithstanding any provision of this Settlement Agreement, EPA and ADEQ retain all of their access authorities and rights, including enforcement authorities related thereto, under

CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

25. The Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. The Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

26. The Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified the Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

27. The Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by the Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

28. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

29. Until ten (10) years after the Respondents' receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), the Respondents shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic

form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after the Respondents' receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), the Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

30. At the conclusion of this document retention period, the Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, the Respondents shall deliver any such records or documents to EPA. The Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

31. The Respondents hereby certify individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

32. The Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

33. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the

Respondents shall immediately take all appropriate action. The Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Response and Prevention Branch, EPA Region 6, at 1-866-EPA-SPIL (or 1-866-372-7745). In the event that the Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, the Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

34. In addition, in the event of any release of a hazardous substance from the Site, the Respondents shall immediately notify the National Response Center at (800) 424-8802. The Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the recurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

35. The OSC shall be responsible for overseeing the Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

36. Payment for Past Response Costs.

a. Within thirty (30) days after the Effective Date, the Respondents shall pay to EPA \$118,503.00 for Past Response Costs. The above payment reflects the Respondents payment for 231 containers at \$513.00 per container. Payment shall be made to EPA by Electronic Funds Transfer (EFT) in accordance with current EFT procedures provided below, and shall be made payable to "EPA Hazardous Substance Superfund," including a statement referencing the name and address of the party making payment, the Site name, the CERCLA Docket Number 06-11-08, and EPA Site/Spill ID Number - 06 SY. The Respondents shall send payment to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

b. At the time of payment, the Respondents shall send notice that payment has been made to acctsreceivable.cinwd@epa.gov, and to:

Section Chief, Enforcement Assessment (6SF-TE)
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave.
Dallas, TX 75202-2733.

The total amount to be paid by the Respondents pursuant to Paragraph 36(a) shall be deposited in the EPA Hazardous Substance Superfund.

37. Payments for Future Response Costs.

a. The Respondents shall pay EPA all Future Response Costs that are not inconsistent with the NCP. On a periodic basis, EPA will send the Respondents a bill requiring payment that includes a cost summary (standard cost accounting summary), which includes direct and indirect costs incurred by EPA and its contractors. The Respondents shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 39 of this Settlement Agreement.

b. The Respondents shall make all payments required by this Paragraph by Electronic Funds Transfer (EFT), made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment, the CERCLA Docket Number 06-11-08, and EPA Site/Spill ID Number - 06 SY. Payment shall be sent to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

c. At the time of payment, the Respondents shall send notice that payment has been made to acctsreceivable.cinwd@epa.gov, and to:

Section Chief, Enforcement Assessment (6SF-TE)
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave.
Dallas, TX 75202-2733

The total amount to be paid by the Respondents pursuant to Paragraph 37(a) shall be deposited in the EPA Hazardous Substance Superfund.

38. In the event that the payment for Past Response Costs is not made within thirty (30) days of the Effective Date, or the payments for Future Response Costs are not made within thirty (30) days of the Respondents' receipt of a bill, the Respondents shall pay interest on the unpaid balance. The interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of the Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

39. The Respondents may contest payment of any Future Response Costs billed under Paragraph 37 if they determined that EPA has made a mathematical error, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 37. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Texas, and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Respondents shall send the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with the establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 37. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 37. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive

mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

40. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. The Parties agree that the additional removal action section found at XXVIII is subject to the dispute resolution provisions provided herein.

41. If the Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objections within seven (7) days of such action, unless the objections have been resolved informally. EPA and the Respondents shall have fourteen (14) days from EPA's receipt of the Respondents' written objections to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

42. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official, the Superfund Division Director will issue a written decision on the dispute to the Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. The Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, the Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

43. The Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of the Respondents, or of any entity controlled by the Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite the Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance of work.

44. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, the Respondents shall notify EPA orally within twenty-four (24) hours of when the Respondents first knew that the event might cause a delay. Within seven (7) days thereafter, the Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude the Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

45. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify the Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify the Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

46. The Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 47 and 48 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by the Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

47. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 47(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$2,000	31st day and beyond

b. Compliance Milestones

The Respondents shall pay stipulated penalties in the amount of \$1,000 per day, per violation, for each day (1st through the 14th day) the Respondents fail to comply with any EPA approved Workplan/Statement of Work, Quality Assurance and Sampling Plan or any other approved plan required pursuant to this Settlement Agreement; \$1,500 per day, per violation, for each day (15th through the 30th day) the Respondents fail to comply with any EPA approved Workplan/State of Work, a Modified Workplan, Quality Assurance and Sampling Plan or any other approved plan required pursuant to this Settlement Agreement; and \$2,000 per day, per violation, for each day (31st day and beyond) the Respondents fail to comply with any EPA approved Workplan/State of Work, Quality Assurance and Sampling Plan or any other approved plan required pursuant to this Settlement Agreement.

48. Stipulated Penalty Amounts - Reports/Workplans. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports, workplans/SOW or other written documents pursuant to Sections VII (Designation of Contractor, Project Coordinator and On-Scene Coordinator), VIII (Work to be Performed), XI (Record Retention), XIII (Emergency Response and Notification of Releases), and XXVII (Modifications) of this Settlement Agreement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$2,000	31st day and beyond

49. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 59 of Section XX (Reservation of Rights by EPA), the Respondents shall be liable for a stipulated penalty in the amount of \$7,500.

50. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies the Respondents of any deficiency; and 2) with respect to a decision by the EPA Superfund Division Director under Paragraph 42 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the

Superfund Division Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

51. Following EPA's determination that the Respondents failed to comply with a requirement of this Settlement Agreement, EPA may give the Respondents written notification of the failure and describe the noncompliance. EPA may send the Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Respondents of a violation.

52. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of the Respondents' receipt from EPA of a demand for payment of the penalties, unless the Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis MO 63197-9000
ATTN: COLLECTION OFFICER FOR SUPERFUND:
Arkansas Waste-to-Energy Site- 06 SY

The payment shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number - 06 SY, the CERCLA Docket Number 06-11-08, and the name and address of the Party making payment. Copies of the check paid pursuant to this Section, and any accompanying transmittal letter, shall be sent to EPA as provided in Paragraph 12, to:

Section Chief, Enforcement Assessment (6SF-TE)
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave.
Dallas, TX 75202-2733.

53. The payment of penalties shall not alter in any way the Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

54. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

55. If the Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. The Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 52. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement, or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 59. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

56. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against the Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Past and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by the Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Past and Future Response Costs pursuant to Section XV. This covenant not to sue extends only to the Respondents and do not extend to any other person.

a. Notwithstanding any other provision of this Settlement Agreement, the EPA reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Respondents to perform further response actions relating to the Site, or to reimburse EPA for additional costs of response if, subsequent to the Effective Date of this Settlement Agreement:

- i. Conditions at the Site, previously unknown to EPA, are discovered; or
- ii. Information, previously unknown to EPA, is received, in whole or in part, an EPA determines that these previously unknown conditions or this

information together with other relevant information indicate that the response action taken at the Site is not protective of human health or the environment.

XX. RESERVATIONS OF RIGHTS BY EPA

57. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

58. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against the Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by the Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

59. Work Takeover. In the event EPA determines that the Respondents have ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in their performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the

performance of all or any portion of the Work as EPA determines necessary. The Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that the Respondents shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

60. The Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 62 (Waiver of Claims), the above covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 58 (b), (c), and (e) - (g), but only to the extent that the Respondents' claim arises from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

d. The Respondents hereby covenant not to sue and agree not to assert any direct or indirect claims against each other or against their own or each others' officers, directors, employees or agents with respect to matters addressed in this Settlement Agreement except as necessary to enforce the terms of any agreements by or between them relating to matters addressed in this Settlement Agreement.

61. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

62. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of the Respondents. The United States or EPA shall not be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

63. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

64. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

65. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2), 42 U.S.C. §§ 9613(f)(2), and that Respondents are entitled, as of the Effective Date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs and Future Response Costs.

XXIV. INDEMNIFICATION

66. The Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, the Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting

on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of the Respondents in carrying out activities pursuant to this Settlement Agreement. Neither the Respondents nor any such contractors shall be considered an agent of the United States.

67. The United States shall give the Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with the Respondents prior to settling such claim.

68. The Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

69. At least ten (10) days prior to commencing any on-Site work under this Settlement Agreement, the Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of two (2) million dollars, combined single limit. Within the same time period, the Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, the Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the Respondents in furtherance of this Settlement Agreement. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

70. Within thirty (30) days of the Effective Date of this Settlement Agreement, the Respondents shall establish and maintain financial security in the amount of \$700,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Respondents;
- e. A demonstration that the Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f); or
- f. Other financial information regarding the Respondents including audited financial statements, and a letter from the Respondents' Chief Financial Officer certifying and assuring the Respondents' ability to finance and pay for the work provided in this settlement agreement.

71. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instruments(s) evidencing such assurances) are inadequate, Respondents shall, within thirty (30) days of receipt of notice of EPA determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 70 above. In addition, if at any time EPA notifies Respondents that the anticipated costs of completing the Work has increased, then, within thirty (30) days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such costs increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

a. If the Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 70(a) of this Section, the Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If the Respondents seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 70(d) or (e) of this Section, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Settlement Agreement, whereever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate as provided in Paragraph 70 for the

Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

72. If, after the Effective Date, the Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 70 of this Section, the Respondents may, on any anniversary date of the Effective Date of this Settlement Agreement, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. The Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, the Respondents may reduce the amount of the security in accordance with the written decision resolving the dispute.

73. The Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, the Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

74. The OSC may make modifications to any plan or schedule, or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any such plan, schedule, or Statement of Work modification shall be consistent with, and conform to the requirements found in Section VIII (Work to be Performed). Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

75. If the Respondents seek permission to deviate from any approved work plan or schedule, or Statement of Work, the Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. The Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 74.

76. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve the Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. ADDITIONAL REMOVAL ACTION

77. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify the Respondents of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, the Respondents shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section VIII, the Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications).

XXIX. NOTICE OF COMPLETION OF WORK

78. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, such as post-removal site controls, payment of Future Response Costs, and record retention, EPA will provide written notice to the Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify the Respondents, provide a list of the deficiencies, and require that the Respondents modify the Work Plan if appropriate in order to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by the Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXX. PUBLIC COMMENT AND ATTORNEY GENERAL APPROVAL

79. Final acceptance by EPA of Section XV (Payment of Response Costs of this Settlement Agreement) shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XV of this Settlement Agreement if comments disclose facts or considerations that indicate that Section XV of this Settlement Agreement is inappropriate, improper or inadequate. Otherwise, Section XV shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Settlement Agreement.

80. The Attorney General or his/her designee has approved the response costs settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XXXI. SEVERABILITY/INTEGRATION/APPENDICES

81. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that the Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, the Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

82. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The Statement of Work as defined at Paragraph 7, at r, is attached as an appendix to this Settlement Agreement, and is enforceable under this Settlement Agreement.

XXXII. EFFECTIVE DATE

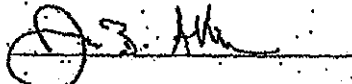
83. This Settlement Agreement shall be effective seven (7) days after the Settlement Agreement is signed by the Superfund Division Director.

The Undersigned Party enters into this Administrative Order on Consent for Removal Action, CERCLA Docket No. 06-11-08, in the matter of Arkansas Municipal Waste to Energy Site.

The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party she represents to this document.

Agreed this 22nd day of June 2011.

For: E.I. du Pont de Nemours & Company (for Griffin LLC), (Respondent)



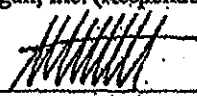
James B. Allen
Corporate Counsel
E.I. du Pont de Nemours & Company
1007 Market Street
Wilmington, DE 19898

The Undersigned Party enters into this Administrative Order on Consent for Removal Action, CERCLA Docket No. 06-11-08, in the matter of Arkansas Municipal Waste to Energy Site.

The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party she represents to this document.

Agreed this 22 day of June 2011.

For: Allergan, Inc. (Respondent)




Samuel J. Gesten
BVP & General Counsel
Allergan, Inc.
2525 Dupont Drive
Irvine, CA 92612

The Undersigned Party enters into this Administrative Order on Consent for Removal Action, CERCLA Docket No. 06-11-08, in the matter of Arkansas Municipal Waste to Energy Site.

The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party she represents to this document.

Agreed this 15th day of June 2011,

For: United Industries Corporation, d/b/a Chemisce (Respondent)

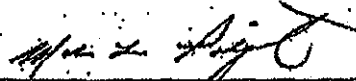

Name Michael G. Pfefferkorn
Title Secretary
United Industries Corporation
1 Rider Trail Plaza Drive
Earth City, MO 63045

The Undersigned Party enters into this Administrative Order on Consent for Removal Action, CERCLA Docket No. 06-11-08, in the matter of Arkansas Municipal Waste to Energy Site.

The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party she represents to this document.

Agreed this 13 day of June 2011.

For: Agrilliance LLC (Respondent)


Name Mark Palmquist
Title Manager
Agrilliance LLC
5500 Cenex Drive
Inver Grove Heights, MN 55007

The Undersigned Party enters into this Administrative Order on Consent for Removal Action, CERCLA Docket No. 06-11-08, in the matter of Arkansas Municipal Waste to Energy Site.

The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party she represents to this document.

Agreed this 30th day of June 2011.

For: Strong Environmental, Inc. (Respondent)



Richard Verch

Vice President, Environmental Services

Strong Environmental, Inc.

6264 Crooked Creek Road

Norcross, Georgia 30092

The Undersigned Party enters into this Administrative Order on Consent for Removal Action, CERCLA Docket No. 06-11-08, in the matter of Arkansas Municipal Waste to Energy Site.

The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party she represents to this document.

Agreed this _____ day of June 2011.

For: Chemical Reclamation Services, LLC and Solvent Recovery, LLC (Respondents)



Deborah S. Huston, Secretary
5151 San Felipe, Suite 1600
Houston, Texas 77056

The Undersigned Party enters into this Administrative Order on Consent, CERCLA Docket No. 06-02-12, In the Matter of Arkansas Municipal Waste to Energy Site.

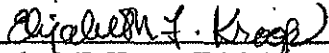
The undersigned Acting Assistant Attorney General is authorized to approve this Settlement Agreement and hereby approves this Settlement Agreement pursuant to the authority of the Attorney General to compromise and settle claims of the United States.

Agreed this 30 day of December 2011.

For: U.S. Department of Justice



Robert G. Dreher
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice



Elizabeth F. Kroop, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

The Undersigned Party enters into this Administrative Order on Consent for Removal Action, CERCLA Docket No. 06-11-08, in the matter of Arkansas Municipal Waste to Energy Site.

It is so ORDERED and AGREED this 26 day of April 2012.

For: United States Environmental Protection Agency

A handwritten signature in cursive script, appearing to read "Pam Phillips", is written over a horizontal line.

Pam Phillips

Superfund Division Director, Acting

U.S. Environmental Protection Agency, Region 6

1445 Ross Avenue

Dallas, Texas 75202 - 2733

STATEMENT OF WORK
ARKANSAS MUNICIPAL WASTE TO ENERGY SITE
OSCEOLA, MISSISSIPPI COUNTY, ARKANSAS

I. BACKGROUND

A. SITE LOCATION

The Arkansas Municipal Waste to Energy Site is located at 420 West Parsons Drive, Osceola, Mississippi County, Arkansas (Figure 1). The Site coordinates are Latitude 35.69419 North and Longitude 89.97217 West, determined using a Garmin 5. Site coordinates refer to the south west corner of the warehouse building.

The approximately 50,000 square foot warehouse sits on approximately 2.5 acres, and is bounded by an inactive warehouse facility to the north, Parsons Drive to the south, Ohlendorf Road to the west and an active scrap metal recycler to the east. Land use within .25 of a mile of the Site includes various commercial businesses, agricultural land, residences, a small apartment complex and a day care center. A residential subdivision is within .5 mile to the north and east of the Site. The Mississippi River is within 1 mile of the Site.

B. SITE HISTORY

The Arkansas Municipal Waste to Energy (AMWE) Site is an inactive warehouse facility used to store containers apparently intended to be burned at the nearby municipal incinerator by the operators of the Arkansas Municipal Waste to Energy Facility. The facility operators leased the incinerator from the City of Osceola. The facility was permitted by the Arkansas Department of Environmental Quality (ADEQ) to burn medical and municipal waste. As the result of a complaint by a local community member in February 2003, ADEQ began an investigation of the AMWE facility.

During their investigation, ADEQ discovered materials in containers stored improperly at the warehouse. Some containers were leaking and in poor condition and numerous spills were observed on the warehouse floor. While labels on some containers indicated non-hazardous materials other containers carried both hazardous and non-hazardous labels.

Hazard categorization tests carried out on a small portion of the containers in the warehouse, by ADEQ during their investigation indicated that several of the containers displayed hazardous characteristics such as flammability, ignitability and corrosivity. Additionally, the warehouse structure was found to be severely damaged in some places. Large quantities of medical waste were also stored at the warehouse.

As a result of ADEQ's investigation, it was determined that hazardous waste was being stored at this facility, constituting numerous violations of State Resource Conservation and Recovery Act (RCRA) regulations. The incinerator facility ceased operation in 2003 and the facility operator filed for bankruptcy in 2004. On June 2, 2004, ADEQ formally requested EPA's assistance to address the immediate threats associated with the remaining waste at this Site. Superfund Division Director Samuel Coleman approved a classic emergency response action to the Site on

June 8, 2004. The verbal approval included activities meant to stabilize the Site while EPA negotiated with PCI, the owner of a large number of containers and a potentially responsible party for ultimate removal and disposal of the wastes on site.

C. EPA ACTIVITIES

On June 21, 2004 EPA mobilized Emergency and Rapid Response Services (ERRS) and Superfund Technical Assessment and Response Team (START) contractors and US Coast Guard Strike Team resources to the Site and began the process of establishing Site safety features to protect the nearby community; inventorying containers located in the warehouse and determining their condition; documentation of container markings; stabilization of damaged or leaking containers; set up and implementation of sampling and hazardous categorization activities; and the segregation of compatible wastes. EPA has also conducted waste segregation activities to minimize the potential for reactions among improperly stored materials. Additionally the Agency has worked with local fire and law enforcement officials to inform them of the nature and amounts of materials currently stored at the facility and for continued monitoring of the Site against unauthorized intrusion.

Under an AOC with EPA, PCI conducted removal activities at the Site. PCI mobilized to the Site in February 2005, and began to address containers identified with PCI markings. Activities included staging, sampling, and performing hazard categorization on containers. All work by PCI was conducted with removal oversight by EPA.

During the course of PRP-lead removal activities a number of containers were identified that belonged to other parties. In February 2006, EPA re-mobilized to the site to perform sampling and hazard categorization activities on the remaining containers. EPA determined that approximately 1,100 containers from other parties were present onsite.

On August 2, 2007, TestAmerica entered into an AOC with EPA to address eight containers originally generated by TestAmerica. These containers contained low-level radioactive waste. In August 2007, after EPA approval of TestAmerica's Work Plan, TestAmerica mobilized to the Site to package and transport the containers for disposal.

On July 9, 2008, Thermo Fisher Scientific, Inc. entered into an AOC with EPA to address 200 containers originally generated by Richard-Allen Scientific, Inc. The container labels for the material in the Thermo Fisher Scientific containers identified the contents as 10-percent formalin in small bottles. In July 2008, after EPA approval of Thermo Fisher Scientifics' Work Plan Thermo Fisher mobilized to the site to remove their containers.. Thermo Fisher completed the removal action on 10 July 2008, which consisted of the removal of 200 containers from the site and transport to a permitted disposal facility.

To date approximately 708 containers remain on Site.

II. WORK OBJECTIVES

A. GENERAL OBJECTIVES

The Respondent(s) shall conduct a Removal Action to eliminate the threat or potential threat of release of hazardous substances, pollutants or contaminants pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., in a manner consistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300, at the Arkansas Municipal Waste to Energy Site. The Respondent(s) shall conduct a removal action which will categorize, remove and dispose of all remaining containers on the Site. Pursuant to this action, all hazardous substances, pollutants or contaminants removed off-site shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, pursuant to CERCLA Section 121(d)(3), 42 U.S.C. section 9621(d)(3), and the following rule: "Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Action: Final Rule" 58 FR 49200 (September 22, 1993), and codified at 40 C.F.R. § 300.440. A Quality Assurance Project Plan (QAPP) shall be developed and followed to confirm the cleanup of the Site.

B. SITE-SPECIFIC OBJECTIVES

Work shall include but not be limited to the specific areas listed below. Specific areas to be addressed by the Removal Action are:

1. Work Area Designation

The Respondent(s) shall establish work zones at the Site. Work zones shall delineate the exclusion zone, contamination reduction zone and support zone. Zones shall be clearly marked and extra precautions may be necessary because of the proximity of active businesses and residences.

2. Container Inventory

The Respondent(s) will be given a copy of the Government's inventory of the containers and a map showing where the containers are located within the facility. The Respondents shall conduct an inspection of all of their containers within the warehouse. The inspection shall involve the confirmation/verification of visual qualities of each container and any characteristics pertinent to the classification of the container's contents. The containers should be inspected for the following:

- a. Container condition, size, construction, corrosion, rust, punctures, bungs, and leaking contents
- b. Symbols, labels, words, or other markings on the container indicating hazards (i.e., explosive, radioactive, toxic, flammable), or further identifying the containers' contents.

- c. Signs that the container is under pressure.
- d. Shock sensitivity.

The Respondents will collect information comparable to that collected in the Field Inventory Sheet included as Attachment 1. The Respondents shall make note of and inform the OSC immediately of any changes in the condition of the containers from that noted in the Government's inventory.

Survey results can be used to verify the condition of the containers into, for instance:

- Leaking/Deteriorating
- Bulging

3. Waste Classification

The Respondents may provide information demonstrating that certain waste should not be considered as hazardous waste. This information may be in the form of generator process information or analytical information for the specific containers. If this information is not available the Respondents shall perform sampling and analysis of the container contents to determine the appropriate waste classification and disposal method.

4. Container Staging and Sampling

Prior to sampling, the containers shall be staged to allow easy access. Where there is good reason to suspect that containers contain explosive, or shock-sensitive materials, these containers shall be staged in a separate isolated area. After the container has been opened, the Respondents shall monitor head space gases using an explosimeter and organic vapor analyzer. Since some layering or stratification is likely in any solution left undisturbed over time, the Respondents shall take a sample that represents the entire depth of the vessel.

The Respondents shall address loose pack (containers consisting of several different containers of varied materials) in the following manner. Each loose pack shall be opened and each individual container within the loose pack shall be visually inspected. If visual inspection indicates that all containers within a loose pack are similar materials the Respondents shall sample and hazcat a minimum of 10 percent of the containers within the loose pack. If the individual containers within the loose pack appear to contain dissimilar materials the Respondents shall sample and hazcat 100 percent of the containers within the loose pack.

5. Disposal

Should the Respondents choose to group individual containers into waste streams the Respondents shall indicate within this workplan how wastestreams shall be developed. Samples for containers intended to be bulked into wastestreams may be composited for

sample analysis. The workplan shall indicate how composite sample wastestreams will be developed prior to sampling. The workplan shall describe the analyses to be performed and the rationale for the selected analyses.

The Respondents shall submit to the OSC prior to disposal a list of all waste streams planned for disposal. This list shall include waste stream description, profile information, sample analytical results if any; the planned method of disposal and the selected disposal facility. The Respondents shall submit, prior to disposal, a CERCLA Off-Site Acceptability Check List, included as Attachment 3 for each waste stream and corresponding disposal facility. As well as providing Certificates of Destruction for each waste stream, the Respondents shall describe how they will further verify the disposal of the waste stream.

III. WORK PLAN DEVELOPMENT AND PROJECT MANAGEMENT

Respondents must develop and implement a Work Plan to conduct a Removal Action to eliminate the threat or potential threat of release of hazardous substances, pollutants, or contaminants. The plan must contain a schedule for completion of work items contained in it and for the submittal of documents provided for by this SOW. The work plan must at a minimum address the following tasks:

A. PERFORMANCE OF WORK

All work performed must be under the direction of qualified personnel. The Respondents must demonstrate in writing the ability and qualifications of the parties to conduct the proposed Removal Action properly and promptly as required by CERCLA Section 104, 42 U.S.C. § 9604. The selection of the parties to conduct the proposed Removal Action will be subject to review and disapproval by EPA.

B. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

1. Respondents must develop and implement a Quality Management Plan (QMP), or equivalent document. The QMP must document the organizations quality system and address the organizations quality management practices as described in "EPA Requirements for Quality Management Plans" (EPA/240/B-01/002)", March 2001. The QMP shall be reviewed and approved by an EPA QA official prior to the implementation of the action.
2. Respondents must develop and implement a Quality Assurance Project Plan (QAPP). The QAPP must be prepared in accordance with current EPA guidance. Respondents must use the quality assurance, quality control and chain of custody procedures described in the "EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986, (EPA-330/9-78-001-R); EPA's "Guidelines and Specifications for Preparing Quality

Assurance Project Documentation," June 1, 1987; EPA's "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); EPA's "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-02; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; and any representative Sampling Guidance for soil, air, ecology, waste, and water as this information becomes available; any amendments to these documents while conducting all sample collection and analysis activities. Upon approval and notice by the EPA On-Scene Coordinator (OSC), Respondents must implement the QAPP.

3. All sampling and analyses performed pursuant to this Order must conform to EPA direction, approval, and guidance regarding sampling quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents must ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance and directives. Respondents must provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Upon request by the OSC, Respondents must have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. Upon request by EPA, Respondents must allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing work under this Order. EPA will have the right to take any additional samples that it deems necessary.

4. Spill and Emergency Response Contingency Plan.- Respondents must implement the plan after approval by the OSC. The following items must be addressed in detail:

- a. Response to spills or releases at and/or from the Site to address both the workers on-site and the public exposure.
- b. Response analysis for conceivable occurrences (i.e. who and what will respond, alternative communication methods).
- c. Call-down list for notification.
- d. Coordination mechanism with State and local authorities.

C. SITE HEALTH AND SAFETY

1. Respondents must submit to the OSC, for review and comment, a plan to ensure the protection of the public health and safety during the performance of on-site work under this Order. This plan must be prepared in accordance with EPA's current Standard Operating Safety Guide.

2. Respondents must adhere to the requirements under the Occupational Safety and Health Act of 1970 (OSHA), 29 U.S.C. § 651 et seq., and under the laws of the States with plans approved under Section 18 of the OSH Act (State OSH laws), as well as other applicable safety and health requirements. Federal OSHA requirements include, among other things, Hazardous Materials Operation (29 C.F.R. Part 1910, as amended by 54 Fed. Reg. 9317, March 5, 1989), all OSHA General Industry (29 C.F.R. Part 1910), Construction (29 C.F.R. Part 1926), Shipyard (29 C.F.R. Part 1915), and Long shoring (19 C.F.R. Part 1918) standards wherever they are relevant, as well as OSHA record keeping and reporting regulations, and the U.S. Environmental Protection Agency regulations set forth in 40 C.F.R. § 300.150, relating to the conduct of work at Superfund Sites.
3. The Respondents shall conduct all on-site removal activities so as not to create public health and safety hazards or nuisances. The OSC shall provide oversight of the Respondents efforts in utilizing the necessary precautions, as determined by the OSC for the removal activities, to minimize impacts to the surrounding community. Respondents (and their consultants and contractors) is expected to comply with applicable fire, health and safety, building, and construction laws and regulations. To promote public health and safety, corrective actions must be performed in accordance with a site specific Community Health and Safety Plan (Plan) that has been approved by EPA. A Plan must be submitted as part of the Work plan.

D. TRANSPORTATION OF HAZARDOUS SUBSTANCES OR WASTE

1. Respondents shall ensure the transportation of hazardous substances, pollutant or contaminants is in accordance with the applicable Department of Transportation regulations, and any additional applicable and relevant Local, or State, and/or Federal regulations. Respondents shall be required to use hazardous waste manifests where appropriate. State of Arkansas manifests shall be required unless the consignment state requires the use of their manifests.
2. Respondents shall provide evidence that a qualified transporter of hazardous waste materials has been engaged and descriptive assurances that copies of all transportation manifests will be provided to the Region 6 Superfund Enforcement Branch and OSC. Include the expected date such information will be provided. Transporter shall be permitted by the Arkansas Highway and Transportation Department

E. DISPOSAL OF WASTE

1. Respondents must ensure the disposal of hazardous substances, pollutants or contaminants be in accordance with the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., the regulations promulgated under that act, and EPA's Off-site Disposal Rule promulgated pursuant to CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), entitled "Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Action: Final Rule." 58 FR 49200 (September 22, 1993), and codified at 40 C.F.R. § 300.440. Such hazardous substance, pollutant, or contaminant may only be transferred to a facility which is operating in compliance with Sections 3004 and 3004 of RCRA, 42 U.S.C. §§ 6924 and 6925, or, where applicable, in compliance with the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., or other applicable Federal law and all applicable State requirements.
2. Respondents must describe arrangements that have or will be made regarding the contracting with an approved facility that will accept for disposal any hazardous substances, pollutants or contaminants from this Site. Detail how and at what point Region 6 Superfund Enforcement and OSC are to be provided certifications that the hazardous substances, pollutants or contaminants have been properly disposed of.

F. REPORTING REQUIREMENTS

1. Respondents must submit a written report every 21st day after the date of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed by the OSC in writing. This summary report must include hazard categorization results, sampling results as available, dates of activity, work performed, and a discussion of any problems encountered. This report must be submitted to the OSC.
2. Respondents must submit a written report upon completion of the Removal Action. This report must meet all the applicable reporting requirements described in 40 C.F.R. § 300.165.
3. Respondents must, no later than ten calendar days after receipt of an Order, by certified or express mail, return receipt requested, send the Work Plan to the EPA On-Scene Coordinator (OSC).
4. Upon EPA approval of the Work Plan, Respondents must initiate and implement the removal action in accordance with the approved Work Plan. Respondents must notify the OSC at least twenty four hours before the initiation of the Work Plan.
5. During the implementation of the Work Plan, it may become necessary, due to site conditions, for the OSC to make modifications to the Work Plan subject to paragraph 74.

of the AOC. Respondents must comply with and perform all such modifications as directed, in writing, by the OSC.

6. All work required pursuant to the Order must be completed within one-hundred and twenty working days from the receipt of the Order. For purposes of this SOW "working days" means Monday through Friday.